

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Assiah Phinisee, a minor, by and through Rasheena Phinisee, parent & natural guardian & Rasheena Phinisee, in her own right

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Derek R. Layser, Esquire, Layser & Freiwald, P.C., 1500 Walnut Street, 18th Floor, Philadelphia, PA 19102; phone: 215-875-8000

DEFENDANTS

The United States of America

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Susan Becker, Esquire, Assistant U.S. Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | x 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 2679 - FTCA Medical Malpractice Action

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

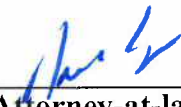
CASE MANAGEMENT TRACK DESIGNATION FORM

Assiah Phinisee, a minor, by and through	:	
Rasheena Phinisee, parent & Natural Guardian	:	CIVIL ACTION
and Rasheena Phinisee, in her own right	:	
v.	:	NO.
The United States of America	:	
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>3/22/10</u> Date	 Attorney-at-law	Plaintiff Attorney for
<u>215-875-8000</u> Telephone	<u>215-875-8575</u> FAX Number	<u>drl@layserfreiwald.com</u> E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 748 Marlbn Road, Apt 2, Philadelphia, PA 19151

Address of Defendant: U.S. Government

Place of Accident, Incident or Transaction: Philadelphia, PA

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____

Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts

2. ☐ FELA

3. ☐ Jones Act-Personal Injury

4. ☐ Antitrust

5. ☐ Patent

6. ☐ Labor-Management Relations

7. ☐ Civil Rights

8. ☐ Habeas Corpus

9. ☐ Securities Act(s) Cases

10. ☐ Social Security Review Cases

11. ☐ All other Federal Question Cases

(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts

2. ☐ Airplane Personal Injury

3. ☐ Assault, Defamation

4. ☐ Marine Personal Injury

5. ☐ Motor Vehicle Personal Injury

6. ☒ Other Personal Injury (Please specify)

FTCA Medical Malpractice

7. ☐ Products Liability

8. ☐ Products Liability — Asbestos

9. ☐ All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Derek R. Layser, Esquire, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 3/22/10

[Signature]
Attorney-at-Law

54938

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3/22/10

[Signature]
Attorney-at-Law

54938

Attorney I.D.#

COMPLAINT – CIVIL ACTION

1. At all times hereinafter mentioned the plaintiffs resided in the State of Pennsylvania and currently reside at the address listed above.
2. RASHEENA PHINISEE is the mother of ASSIAH PHINISEE.
3. RASHEENA PHINISEE and ASSIAH PHINISEE received medical care, treatment, and examinations from KATI GRAHAM- PARKER, CRNP at times indicated in the medical records and at times described hereinafter at **6120-B Woodland Avenue, 2nd Floor, Philadelphia, PA 19143.**
4. While RASHEENA PHINISEE and ASSIAH PHINISEE were under the care of KATI GRAHAM- PARKER, CRNP, KATI GRAHAM- PARKER, CRNP had a duty to provide care and treatment in accordance with good and acceptable medical practice.
5. In a “Notice of Determination” dated May 15, 2009, United States Attorney

LAURIE MAGID, made a determination that KATI GRAHAM- PARKER, CRNP is an employee of the defendant United States of America as an employee of the Public Health Service.

6. At all times hereinafter mentioned, The Family Practice and Counseling Network, The Health Annex was and is clinic operated by the defendant United States of America.

7. In a "Notice of Determination" dated May 15, 2009, United States Attorney LAURIE MAGID, made a determination that The Family Practice and Counseling Network, The Health Annex is deemed an employee of the defendant United States of America as an employee of the Public Health Service.

8. While RASHEENA PHINISEE and ASSIAH PHINISEE were under their care, The Family Practice and Counseling Network, The Health Annex, this clinic had a duty to provide care and treatment in accordance with good and acceptable medical practice.

9. At all times hereinafter mentioned, the Abbottsford Family Practice & Counseling Network was and is operated by the defendant United States of America.

10. In a "Notice of Determination" dated May 15, 2009, United States Attorney LAURIE MAGID, made a determination that the Abbottsford Family Practice & Counseling Network is an employee of the defendant United States of America as an employee of the Public Health Service.

11. While RASHEENA PHINISEE and ASSIAH PHINISEE were under the care of the Abbottsford Family Practice & Counseling Network, the Abbottsford Family Practice & Counseling Network had a duty to provide care and treatment in accordance with good and acceptable medical practice.

12. Certificates Of Merit pursuant to Pa.R.C.P. 1042.3 are attached as to the defendant and each individual and entity named in this Complaint.

PLAINTIFFS HAVE EXHAUSTED ADMINISTRATIVE REMEDIES
UNDER THE PROVISIONS OF THE FEDERAL TORTS CLAIMS ACT,
28 U.S.C. SECTION 2679

13. By use of a Standard Forms 95, dated March 24, 2009, Plaintiffs each properly filed Federal Torts Claims Act [hereinafter FTCA] Claims.

14. United States Postal Return receipts indicate that these FTCA claim forms were properly received by the defendant United States of America on April 6, 2009.

15. By letter dated April 9, 2009, Office of the General Counsel, General Law Division of the Department of Health and Human Services acknowledged receipt of both FTCA claim forms and assigned a claim number of 09-0259-0260.

16. By letters dated June 16 and September 8, 2009, Office of the General Counsel, General Law Division of the Department of Health and Human Services requested medical records. Plaintiffs complied with the requests.

17. As of the date of this Complaint, Plaintiffs have not been provided with a decision regarding their claims by any representative of the United States of America.

18. More than 6 months having passed from when the defendant's acknowledged receipt of the FTCA claims, it is now proper for the Plaintiffs to initiate this lawsuit.

FACTUAL ALLEGATIONS

19. KATI GRAHAM- PARKER, CRNP was an agent, servant and/or employee of The Family Practice and Counseling Network, The Health Annex, the Abbottsford Family Practice & Counseling Network, or its sub-entities, and also of the defendant United States of America during all times relevant to this complaint.

20. Based upon the "Notice of Determination" dated May 15, 2009, United States Attorney LAURIE MAGID, KATI GRAHAM- PARKER, CRNP is an employee of the defendant United States of America as an employee of the Public Health Service.

21. The Family Practice and Counseling Network, The Health Annex and the Abbottsford Family Practice & Counseling Network, based upon the "Notice of Determination" dated May 15, 2009, by United States Attorney LAURIE MAGID, are employees of the defendant United States of America as employees of the Public Health Service.

22. KATI GRAHAM- PARKER, CRNP provided medical care and treatment to RASHEENA PHINISEE for a presumed urinary tract infection on May 15, 2008.

23. At the office visit on May 15, 2008, KATI GRAHAM- PARKER, CRNP, knew and made note of the fact that RASHEENA PHINISEE was the mother of the then 6-day-old ASSIAH PHINISEE, who was born on May 9, 2008.

24. At the office visit on May 15, 2008, KATI GRAHAM- PARKER, CRNP, knew and made note of the fact that RASHEENA PHINISEE was breast-feeding the then 6-day-old ASSIAH PHINISEE.

25. At the office visit on May 15, 2008, KATI GRAHAM- PARKER, CRNP, knew and made note of the fact that 6-day-old ASSIAH PHINISEE was jaundiced and ordered a bilirubin test therefore.

26. At the office visit on May 15, 2008, KATI GRAHAM- PARKER, CRNP, knew or should have known that RASHEENA PHINISEE had no known allergies to any antibiotics.

27. Therefore, at the office visit on May 15, 2008, KATI GRAHAM- PARKER,

CRNP, knew or should have known that for her presumed urinary tract infection, RASHEENA PHINISEE could have and should been treated with any number of antibiotics that would have been safe for a mother breast-feeding a 6-day-old neonate.

28. At the office visit on May 15, 2008, KATI GRAHAM- PARKER, CRNP, prescribed a 7-day course of treatment with MACROBID 100MG CAPLETS to be taken by RASHEENA PHINISEE twice per day for 7 days.

29. At the office visit on May 15, 2008, KATI GRAHAM- PARKER, CRNP, knew or should have known that MACROBID was known to cross over into the nursing baby, ASSIAH PHINISEE, through her mother's breast milk.

30. At the office visit on May 15, 2008, KATI GRAHAM- PARKER, CRNP, knew or should have known that MACROBID is known to cause liver damage in nursing infants, particularly when these nursing infants are less than 1 month old.

31. At the office visit on May 15, 2008, KATI GRAHAM- PARKER, CRNP, knew or should have known that MACROBID is contraindicated in pregnant patients at term (38-42 weeks gestation), during labor and delivery or when the onset of labor is imminent; and most particularly that the drug should not be given to a mother who is nursing a neonate under one month of age.

32. Despite that she knew or should have known that MACROBID was dangerous to ASSIAH PHINISEE's liver, KATI GRAHAM- PARKER, CRNP, nonetheless negligently prescribed MACROBID as described above in paragraph 28.

33. KATI GRAHAM- PARKER, CRNP did not discuss with RASHEENA PHINISEE the known risks associated with giving MACROBID to a nursing mother, particularly of a neonate of an age less than 1 month.

34. KATI GRAHAM- PARKER, CRNP did not discuss with RASHEENA PHINISEE the alternative antibiotics that could have and should have been prescribed for RASHEENA PHINISEE's presumed urinary tract infection: antibiotics to which RASHEENA PHINISEE was not allergic and which would have presented no danger to her then 6-day old nursing daughter, ASSIAH PHINISEE.

35. KATI GRAHAM- PARKER, CRNP did not discuss with RASHEENA PHINISEE the alternative that if MACROBID was necessary, RASHEENA PHINISEE could have and should have simply stopped breast-feeding while MACROBID was in her system.

36. At the office visit on May 15, 2008, KATI GRAHAM- PARKER, CRNP, knew and made note of the fact that RASHEENA PHINISEE had a Breast Pump that KATI GRAHAM- PARKER, CRNP had prescribed for RASHEENA PHINISEE.

37. KATI GRAHAM- PARKER, CRNP did not discuss with RASHEENA PHINISEE that stopping breast-feeding for seven days was a simple matter of feeding the baby formula, while continuing to pump breast milk (which would be thrown away) so as to keep the mother lactating and allowing thereby the mother to continue breast-feeding as soon as the MACROBID was out of her system.

ALLEGATIONS OF DAMAGE AND INJURY
FOR WHICH RECOVERY IS SOUGHT

38. As a direct and proximate result of above negligence, the minor plaintiff ASSIAH PHINISEE, was caused to sustain severe and irreparable personal injury, pain and suffering, and damage consisting of insult, injury and irreversible damage to her liver, permanent damage which has in the past and is expected in the future to impair the ability of ASSIAH PHINISEE to function in regard to all functions normally performed by her liver.

ASSIAH PHINISEE has been forced to undergo numerous operations as reflected in the medical records, including but not limited to a liver transplant, and has already and will continue to suffer all of the consequences and sequeli that are known to accompany a liver transplant now and into the future, for the remainder of her natural live.

39. As a direct and proximate result of the breaches herein enumerated, the plaintiff ASSIAH PHINISEE, was caused to sustain pain and suffering, inability to enjoy the normal functions of life, loss of earning capacity with loss of fringe benefits derived from employment, medical and hospital expenses, and all of the aforesaid damage has impacted on ASSIAH PHINISEE psychological and emotional well-being and caused ASSIAH PHINISEE frustration and general psychological damage.

COUNT 1

NEGLIGENCE AS TO RASHEENA PHINISEE AND ASSIAH PHINISEE
ON THE PART OF KATI GRAHAM- PARKER, CRNP

An Employee of the Public Health Service and the Defendant United States of America

40. The allegations of all preceding paragraphs are incorporated as if set forth in full herein.

41. KATI GRAHAM- PARKER, CRNP, employee of the defendant United States of America, was careless and negligent and rendered medical care and treatment to RASHEENA PHINISEE AND ASSIAH PHINISEE not in accordance with good and accepted medical practice consisting of:

a. Prescribing a 7-day course of treatment with MACROBID 100MG CAPLETS to be taken by RASHEENA PHINISEE twice per day for 7 days when KATI GRAHAM- PARKER, CRNP knew or should have known that giving such medication to a mother known to be nursing a neonate less than one month of age presented a serious risk of severe and permanent damage to the neonate's liver.

b. Failing to discuss the known risks of MACROBID to ASSIAH PHINISEE with her mother, RASHEENA PHINISEE.

c. Failing to discuss the known alternative antibiotic treatments that were available and were known not to present a risk to the 6-day-old nursing neonate, ASSIAH PHINISEE.

d. Failing to prescribe an alternative antibiotic that would have presented no risk to the 6-day-old nursing neonate, ASSIAH PHINISEE.

e. Failing to tell RASHEENA PHINISEE to stop breast-feeding while she was on MACROBID.

f. Failing to discuss with RASHEENA PHINISEE that stopping breast-feeding for seven days was a simple matter of feeding the baby formula, while continuing to pump breast milk (which would be thrown away) so as to keep the mother lactating and allowing thereby the mother to continue breast-feeding as soon as the MACROBID is out of her system.

42. The amount demanded as damages exceeds \$150,000.00 and exceeds the jurisdictional amount requiring arbitration.

WHEREFORE, the plaintiff demands judgment against the defendant in an amount to be determined by the Court together with the costs of this action.

COUNT 2
VICARIOUS LIABILITY AS TO RASHEENA PHINISEE AND ASSIAH PHINISEE
ON THE PART OF

The Family Practice and Counseling Network, The Health Annex
An Employee of the Public Health Service and the Defendant United States of America

43. The allegations of all preceding paragraphs are incorporated as if set forth in full herein.

44. The Family Practice and Counseling Network, The Health Annex which has been determined in a "Notice of Determination" dated May 15, 2009, by United States Attorney LAURIE MAGID, that The Family Practice and Counseling Network, The Health Annex is an employee of the defendant United States of America as an employee of the Public Health Service, and is vicariously liable for the actions of its officers, shareholders, employees or agents who have been named in this Complaint while those individuals were providing professional services to RASHEENA PHINISEE AND ASSIAH PHINISEE.

45. The vicarious liability of The Family Practice and Counseling Network, The Health Annex and therefore the defendant United States of America is the proximate cause of the injuries for which recovery is sought.

46. The amount demanded as damages exceeds \$150,000.00 and exceeds the jurisdictional amount requiring arbitration.

WHEREFORE, the plaintiff demands judgment against the defendant in an amount to be determined by the Court together with the costs of this action.

COUNT 3
VICARIOUS LIABILITY AS TO RASHEENA PHINISEE AND ASSIAH PHINISEE
ON THE PART OF
The Abbottsford Family Practice & Counseling Network
An Employee of the Public Health Service and the Defendant United States of America

47. The allegations of all preceding paragraphs are incorporated as if set forth in full herein.

48. The Abbottsford Family Practice & Counseling Network which has been determined in a "Notice of Determination" dated May 15, 2009, by United States Attorney LAURIE MAGID, that the Abbottsford Family Practice & Counseling Network is an employee of the defendant United States of America as an employee of the Public Health

Service, and is vicariously liable for the actions of its officers, shareholders, employees or agents who have been named in this Complaint while those individuals were providing professional services to RASHEENA PHINISEE AND ASSIAH PHINISEE.

49. The vicarious liability of the Abbotsford Family Practice & Counseling Network, and therefore the United States of America is the proximate cause of the injuries for which recovery is sought.

50. The amount demanded as damages exceeds \$150,000.00 and exceeds the jurisdictional amount requiring arbitration.

WHEREFORE, the plaintiff demands judgment against the defendant in an amount to be determined by the Court together with the costs of this action.

COUNT 4
VICARIOUS LIABILITY AS TO RASHEENA PHINISEE AND ASSIAH PHINISEE
ON THE PART OF the Defendant UNITED STATES OF AMERICA

51. The allegations of all preceding paragraphs are incorporated as if set forth in full herein.

52. The UNITED STATES OF AMERICA in a "Notice of Determination" dated May 15, 2009, by United States Attorney LAURIE MAGID, has determined that KATI GRAHAM- PARKER, CRNP, The Family Practice and Counseling Network, The Health Annex, and the Abbotsford Family Practice & Counseling Network are all employees of the defendant United States of America as an employees of the Public Health Service. As such, the defendant UNITED STATES OF AMERICA has accepted its liability for the negligence of these named employees who have been named in this Complaint while those individuals were providing professional services to RASHEENA PHINISEE AND ASSIAH PHINISEE.

53. In a "Notice of Determination" dated May 15, 2009, United States Attorney LAURIE MAGID, specifically stated: "[P]ursuant to 42 U.S.C. Section 233(1)(1), the Attorney General of the United States, by and through his designee, Laurie Magid, United States Attorney for the Eastern District of Pennsylvania, has determined that defendants, The Health Annex Family Practice and Counseling Network, Abbottsford Family Practice & Counseling Network, and Kati Graham-Parker, are deemed to be employees of the of the Public Health Service with respect to the actions or omissions that are the subject of the above captioned action." [Said action being a suit filed in the Court of Common Pleas for Philadelphia County, which action was thereafter removed to this Honorable Court, the United States District Court, Eastern District of Pennsylvania.]

54. The vicarious liability of the defendant UNITED STATES OF AMERICA is the proximate cause of the injuries for which recovery is sought.

55. The amount demanded as damages exceeds \$150,000.00 and exceeds the jurisdictional amount requiring arbitration.

WHEREFORE, the plaintiff demands judgment against the defendant in an amount to be determined by the Court together with the costs of this action.

COUNT 5
PARENTAL CLAIM OF RASHEENA PHINISEE
AGAINST ALL DEFENDANTS

56. The allegations of all preceding paragraphs are incorporated as if set forth in full herein.

57. As a result of the aforesaid the plaintiff, RASHEENA PHINISEE, makes a claim against the defendant UNITED STATES OF AMERICA for medical expenses and for loss of services of ASSIAH PHINISEE and any other parental cause of action as may be

deemed just and proper.

58. The amount demanded as damages exceeds \$150,000.00 and exceeds the jurisdictional amount requiring arbitration.

WHEREFORE, the plaintiff demands judgment against the defendant in an amount to be determined by the Court together with the costs of this action.

SPENCER & ASSOCIATES



GILBERT G. SPENCER
I.D. No. 67828
2 Penn Center Plaza, Suite 200
Philadelphia, PA 19102
(215) 875-2300

LAYSER & FREIWALD, P.C.



DEREK R. LAYSER
I.D. No. 54938
1500 Walnut Street, 18th Floor
Philadelphia, PA 19102
(215) 875-8000

March 22, 2010

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ASSIAH PHINISEE, A Minor, By And Through
RASHEENA PHINISEE, The Parent And Natural Guardian,
and RASHEENA PHINISEE, In her own right,

Plaintiff(s),

VS.

The UNITED STATES OF AMERICA,

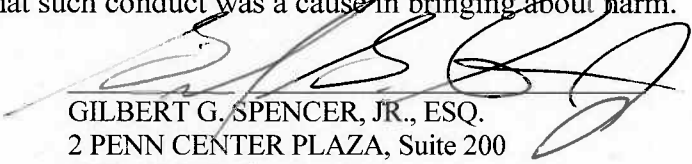
Defendant.

SPENCER & ASSOCIATES
GILBERT G. SPENCER, ESQ.
Attorneys for the Plaintiffs, ID. NO. 67828
2 PENN CENTER PLAZA, Suite 200
PHILADELPHIA, PA 19102
(215) 875-2300

CERTIFICATE OF MERIT AS TO
Defendant
The UNITED STATES OF AMERICA

I, GILBERT G. SPENCER, JR., Certify that:

The claim that The UNITED STATES OF AMERICA deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard. An appropriate licensed professional has supplied to the undersigned a written statement that there is a basis to conclude that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of this complaint by these other licensed professionals fell outside acceptable professional standards and that such conduct was a cause in bringing about harm.



GILBERT G. SPENCER, JR., ESQ.
2 PENN CENTER PLAZA, Suite 200
PHILADELPHIA, PA 19101
(215) 875-2300

Dated: Wednesday, March 10, 2010

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ASSIAH PHINISEE, A Minor, By And Through
RASHEENA PHINISEE, The Parent And Natural Guardian,
and RASHEENA PHINISEE, In her own right,

Plaintiff(s),

VS.

The UNITED STATES OF AMERICA,

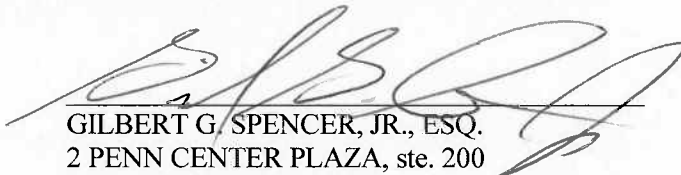
Defendant.

SPENCER & ASSOCIATES
GILBERT G. SPENCER, ESQ.
Attorneys for the Plaintiffs
ID. NO. 67828
2 PENN CENTER PLAZA, Suite 200
PHILADELPHIA, PA 19102
(215) 875-2300

CERTIFICATE OF MERIT AS TO
KATI PARKER-GRAHAM, CRNP
Employee of Public Health Service and Defendant United States of America

I, GILBERT G. SPENCER, JR., Certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of this complaint by KATI PARKER-GRAHAM, CRNP fell outside acceptable professional standards and that such conduct was a cause in bringing about harm.


GILBERT G. SPENCER, JR., ESQ.
2 PENN CENTER PLAZA, ste. 200
PHILADELPHIA, PA 19101
(215) 875-2300

Dated: Wednesday, March 10, 2010

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ASSIAH PHINISEE, A Minor, By And Through
RASHEENA PHINISEE, The Parent And Natural Guardian,
and RASHEENA PHINISEE, In her own right,

Plaintiff(s),

VS.

The UNITED STATES OF AMERICA,

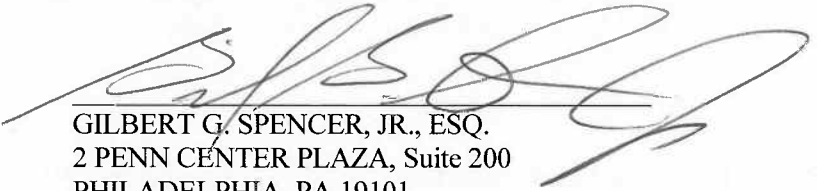
Defendant.

SPENCER & ASSOCIATES
GILBERT G. SPENCER, ESQ.
Attorneys for the Plaintiffs, ID. NO. 67828
2 PENN CENTER PLAZA, Suite 200
PHILADELPHIA, PA 19102
(215) 875-2300

CERTIFICATE OF MERIT AS TO
The Family Practice and Counseling Network-The Health Annex
Employee of Public Health Service and Defendant United States of America

I, GILBERT G. SPENCER, JR., Certify that:

The claim that The Family Practice and Counseling Network-The Health Annex deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this federal clinic is responsible deviated from an acceptable professional standard. An appropriate licensed professional has supplied to the undersigned a written statement that there is a basis to conclude that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of this complaint by these other licensed professionals fell outside acceptable professional standards and that such conduct was a cause in bringing about harm.


GILBERT G. SPENCER, JR., ESQ.
2 PENN CENTER PLAZA, Suite 200
PHILADELPHIA, PA 19101
(215) 875-2300

Dated: Wednesday, March 10, 2010

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ASSIAH PHINISEE, A Minor, By And Through
RASHEENA PHINISEE, The Parent And Natural Guardian,
and RASHEENA PHINISEE, In her own right,

Plaintiff(s),

VS.

The UNITED STATES OF AMERICA,

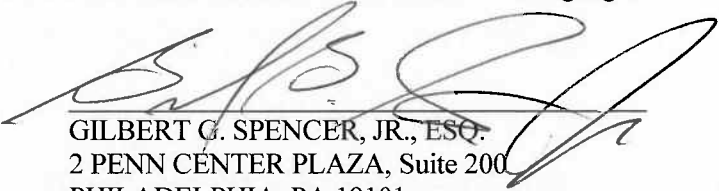
Defendant.

SPENCER & ASSOCIATES
GILBERT G. SPENCER, ESQ.
Attorneys for the Plaintiffs, ID. NO. 67828
2 PENN CENTER PLAZA, Suite 200
PHILADELPHIA, PA 19102
(215) 875-2300

CERTIFICATE OF MERIT AS TO
The Abbottsford Family Practice & Counseling Network
Employee of Public Health Service and Defendant United States of America

I, GILBERT G. SPENCER, JR., Certify that:

The claim that the Abbottsford Family Practice & Counseling Network deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this network is responsible deviated from an acceptable professional standard. An appropriate licensed professional has supplied to the undersigned a written statement that there is a basis to conclude that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of this complaint by these other licensed professionals fell outside acceptable professional standards and that such conduct was a cause in bringing about harm.


GILBERT G. SPENCER, JR., ESQ.
2 PENN CENTER PLAZA, Suite 200
PHILADELPHIA, PA 19101
(215) 875-2300

Dated: Wednesday, March 10, 2010